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Supreme Court, U.S.
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No. 03-1524

In the Supreme Court of the United States

CLARENCE BRENT HAEBERLE,
Petitioner,

v.

UNIVERSITY OF LOUISVILLE, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The Petitioner ("Haeberle") brought a claim under 42 U.S.C. § 1983 alleging that he was denied tenure and improperly terminated by the Respondent ("The University"). The Sixth Circuit improperly affirmed the dismissal of Haeberle's claim as barred by the applicable one year statute of limitations. As a result, Haeberle filed a Petition for Writ of Certiorari with this Court. In its Response to Haeberle's Petition, the University has grossly understated the importance of the issues raised, made misstatements of fact and law, and asserted irrelevant arguments, meant to distract this Court. As such, Haeberle now files a brief Reply to address the University's misstatements.

ARGUMENT AND AUTHORITIES

1. The Questions Raised by the Petitioner Have Significant Importance as They Seek Clarification of a Misapplied and Misinterpreted Decision of this Court, Address the Lower Court's Refusal to Apply Applicable State Law, and Seek Clarification of the Proper Standard for Judgments on the Pleadings.

In its Response, the University takes a self-serving position that the questions raised by Haeberle are not of importance. This could not be further from the truth. Several appellate courts have made it clear that the holding of *Delaware State College v. Ricks*,449 U.S. 250 (1980) is difficult to interpret and apply. See e.g. *Johnson v. General Electric*, 840 F.2d 132, 134 (1st Cir. 1988), overruled in part by *Clockdile v. New Hampshire Dep't of Corr.*, 245 F.3d 1, 4 (1st Cir. 2001); *Sumner v. Goodyear Tire & Rubber Co.*, 398 N.W.2d 368, 379 (1986). This confusion is exemplified

by the Sixth Circuit Court of Appeal's misapplication of *Ricks* in this matter. A grant of certiorari is necessary to end the array of inconsistent outcomes that have resulted from attempts to apply the holding of *Ricks*. A clarification of its holding would have a significant impact by establishing a clear and cognizable rule for aggrieved individuals, such as Haeberle, who applied a Kentucky law in calculating limitations as well as a previous Sixth Circuit decision.

Contrary to the University's position, there is a dispute here as to the relevant law applied to Haeberle's claim. State law provides the one year statute of limitation. See *Collard v. Kentucky Board of Nursing*, 896 F.2d 179, 182 (6th Cir. 1990). This is not in dispute. What is disputed is what law governs the commencement of the limitation period. While federal law may provide the general rule that a limitation period commences when the plaintiff knows or should have known that the conduct that is the basis of his or her injuries has taken place, state law must provide the law specific to this claim as to what constitutes a final action of a state-run university for commencement of the limitation period. Past decisions of this Court confirm this. See e.g. *Wilson v. Garcia*, 471 U.S. 261, 269 (1985); *Johnson v. Railway Express Agency, Inc.*, 421 U.S. at 454, 464 (1975).

The Court of Appeals' decision to ignore the applicable law should be addressed by this Court. In *Board of Trustees v. Hayse*, 782 S.W.2d 609, 613 (Ky. 1989), the Kentucky Supreme Court held that in a nearly identical situation as here, the limitation period did not begin to run until the university made a final decision and communicated it to the employee. Here, the communication of the final decision did not occur until March of 2000 when Haeberle was notified by the Board of Trustees. Kentucky statutory law confirms that

the final decision of the University did not occur until this date. See KRS §§ 61.805, 61.835, 164.830.

Furthermore, the proper standard for judgments on the pleadings is an issue of utmost importance. It is a necessity that this Court clarify and settle the proper standard for a judgment on the pleading, similar to what this Court did in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) for the summary judgment standard. This becomes particularly true when the Sixth Circuit misapplied the applicable standard. Such misapplication was pointed out by the dissent of Judge James Gwin.

Haeberle's complaint did not contain self-defeating facts, as the University asserts. The only fact that Haeberle was notified of more than a year before he filed suit was that the University's President gave a negative recommendation to the Board of Trustees regarding his bid for tenure. He was not notified of the University's final decision until March of 2000, and he timely filed a complaint nine months later.

Despite this, the Sixth Circuit accepted September 7, 1999 as the date Haeberle was notified of the final decision, even though on that date, Haeberle was only aware that the University's President gave a negative recommendation to the Board of Trustees. For the Sixth Circuit to make this determination, it had to take a tremendous leap from the pleadings and draw its own factual conclusions. This is a clear violation of the standard for a judgment on the pleadings. See *Grindstaff v. Green*, 133 F.3d 416 (6th Cir. 1998). Haeberle's Complaint established compliance with limitations. The Sixth Circuit essentially made factual conclusions to find non-compliance.

The University cites *Lever v. Northwestern University*, 979 F.2d 552 (7 th Cir. 1992), *cert. denied*, 508 U.S. 951 (1993) to support its contention that certiorari should not be granted here. However, *Lever* is distinguishable. It involved the filing of a Equal Employment Opportunity Commission charge pursuant to 42 U.S.C.S. § 2000e-5. There is also no indication that the court ignored applicable state law and chose to violate an established standard of law, as the lower court did here. If anything, *Lever* confirms that the proper application of *Ricks* has been disputed. *Id.* at 554.

Haeberle has raised significant questions of utmost importance to our judicial system. The University has predictably tried to downplay the substantial issues raised as well as the impact that the resolution of these issues would have on individuals situated similarly to Haeberle. Accordingly, this Court should grant certiorari and settle these issues.

2. The Sixth Circuit's Decision Was Inconsistent with *Ricks* and Any Issue Other Than the Commencement of the Statute of Limitation Is Irrelevant to this Proceeding.

Haeberle has already fully addressed the shortcomings of the Sixth Circuit's decision here, both in his original brief and in this reply. Thus, he will not burden the Court with a reiteration of his position. However, Haeberle wishes to briefly address the University's position that the lower court's decision is in accord with the holding of *Ricks*.

Ricks held that the limitation period began to run when the final decision to deny tenure was made and communicated to the employee. 449 U.S. at 258. Applying that logic to the present matter, Haeberle's statute of limitation began to run

in March of 2000 when Haeberle was notified of the Board of Trustee's final decision. As such, the lower court clearly misapplied *Ricks*, as Haeberle filed his suit within a year of this notification. A limitation period should not commence "so soon that it becomes difficult for a layman to invoke the protection of the civil rights statutes." *Id.* at 262, n. 16.

In an obvious attempt to distract the Court from the significant issues raised here, the University spends more than two pages of its response arguing that it could have prevailed on other grounds as well. This is speculative at best, but more importantly, it is irrelevant to the narrow questions set forth by Haeberle. It is also a waste of this Court's time and resources. The bottom lime is that the Court of Appeals acted outside its boundaries and significantly departed from the accepted course of judicial proceedings in its decision. This can only be cured through a granting of a writ of certiorari.

CONCLUSION

For the foregoing reasons, as well as those set out in Petitioner's original brief, the Petitioner respectfully requests this Court to grant his Petition for writ of certiorari.

Respectfully Submitted,

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